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SCSL-03-01-PT
(3825 - 3829)

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone

Before: Hon. Justice Richard Lussick, Presiding
Hon. Justice Teresa Doherty
Hon. Justice Julia Sebutinde

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 8 January 2007

SPECIAL COURT FOR SIERRA LEONE	
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THE PROSECUTOR

Against

Charles Taylor

Case No. SCSL-03-01-PT

PUBLIC

**PROSECUTION RESPONSE TO "DEFENCE MOTION ON ADEQUATE FACILITIES FOR THE
PREPARATION OF MR. TAYLOR'S DEFENCE"**

Office of the Prosecutor:
Mr. James C. Johnson
Ms. Brenda Hollis

Defence Counsel for Charles Taylor
Mr. Karim A. A. Khan
Mr. Roger Sahota

I. INTRODUCTION

1. The Prosecution files this response to the “Defence Motion on Adequate Facilities for the Preparation of Mr. Taylor’s Defence” (“**Defence Motion on Facilities**”),¹ brought pursuant to Rule 54 of the Rules of Procedure and Evidence (“**Rules**”) and the Court’s inherent jurisdiction based on Article 17 and specifically Article 17(4)(b) of the Statute of the Special Court for Sierra Leone (“**Statute**”).
2. The Defence Motion on Facilities requests that the Trial Chamber direct the Registrar to provide offices or financial support for offices in both The Hague and Monrovia.
3. The Prosecution files this response neither to support nor oppose the Defence Motion on Facilities, but rather to set out what the Prosecution submits is the appropriate test to be applied in deciding the motion.

II. Trial Chamber’s Jurisdiction to Determine the Defence Motion on Facilities

4. Rule 54 of the Rules provides that “at the request of either party...a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial”. According to Rule 73 of the Rules, “either party may move before the...Trial Chamber for appropriate ruling or relief after the initial appearance of the Accused”. The Defence Motion on Facilities would appear to fall within the plain language of these Rules.
5. However, to the extent the relief requested by the Defence is administrative in nature, a Trial Chamber may assert jurisdiction over administrative matters only where those administrative matters impact upon the fundamental right of the Accused to a fair trial, including those rights set forth in Article 17 of the Statute. As noted by this Trial Chamber, this exercise of jurisdiction over administrative matters is the exception, not the

¹ *Prosecutor v Taylor*, SCSL-03-01-PT-147, “Public Defence Motion on Adequate Facilities for the Preparation of Mr. Taylor’s Defence”, 15 December 2006.

rule, and such exercise of jurisdiction must be viewed in its proper context. The Trial Chamber stated:

“it is well established that a Trial Chamber does *not* have jurisdiction to instruct the Registrar in administrative matters that are within his primary competence, *except where* such matters affect the fundamental right of an Accused to a fair trial”.²

The Trial Chamber went on to say that its authority “to oversee an administrative act of the Registrar is limited to situations where fair trial rights are involved”.³

6. In a subsequent decision, this Trial Chamber stated:

“that only in *limited circumstances* may Trial Chambers review the administrative decisions of the Registrar where they are closely related to the fundamental trial rights of the Accused and hence may negatively impact upon his statutory rights under Article 17(2) of the Statute and therewith ultimately on the trial proceedings, but that this exercise of power by the Trial Chamber *should not be used as a substitute for a general power of review* which has not been expressly provided for in the rules of the Special Court”.⁴

7. Thus, the Trial Chamber’s power to review administrative decisions is limited and will not be invoked in all cases which relate to fair trial rights.⁵ This approach has also been adopted by Trial Chambers in cases before the ICTY.⁶

² *Prosecutor v Taylor*, SCSL-03-01-PT-110, “Decision on Defence Oral Application for Orders Pertaining to the Transfer of the Accused to The Hague”, 23 June 2006, emphasis added.

³ *Ibid.*

⁴ *Prosecutor v Taylor*, SCSL-03-01-PT-137, “Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room”, (“**Decision on Motion Requesting Removal of Camera**”), 30 November 2006, emphasis added.

⁵ See also *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-T-636, “Decision on Application by Court Appointed Counsel for the Second Accused for Right of Audience for Mr. Ianuzzi”, 27 June 2006, where Trial Chamber I acknowledged that it “may exercise its inherent jurisdiction to review the administrative decisions of the Principal Defender where such decisions violate the rights of the Accused”, but that the Motion under consideration did not “request the appointment of counsel nor the review of a decision by the Principal Defender in circumstances involving an alleged violation of the rights of the Accused”.

⁶ See cited decision of *Prosecutor v Milutinovic et al.*, IT-99-37-PT, “Decision on Motion for Additional Funds”, 8 July 2003, referring to the Trial Chamber’s power to review decisions of the Registrar as requiring a showing of exceptional circumstances. In *Prosecutor v Hadzihasanovic and Kubura*, IT-01-47-PT, “Decision on Urgent Motion for Ex Parte Oral Hearing on Allocation of Resources to the Defence and Consequences thereof for the Rights of the Accused to a Fair Trial”, 17 June 2003, the Trial Chamber stated: “that the implementation of the legal aid payment system is a primary responsibility for the Registrar and that the Trial Chamber would only be called upon to act if the facts of the case would show that *no reasonable Registrar could have acted in the way as was done*”.

8. The Prosecution submits, therefore, that, in order to exercise jurisdiction over the matters raised in the Defence motion, the Trial Chamber must determine whether these administrative matters "...are closely related to the fundamental trial rights of the Accused and hence may negatively impact upon his statutory rights under Article 17(2) of the Statute and therewith ultimately on the trial proceedings...".⁷ In making this determination, it may be of assistance to note that Article 17 (4) (b) specifically requires that the Accused be provided adequate facilities for the preparation of his defence. Adequate office space at the location of the trial and at location(s) at which the defence can show a need for significant defence investigative efforts would appear to fall within this requirement.

III. CONCLUSION

9. Should the Trial Chamber determine that the administrative matters raised by the Defence Motion on Facilities is closely related to the Accused's fundamental trial rights and thus may negatively impact on his rights as set out in Article 17 (2) of the Statute, the Prosecution requests that the Trial Chamber provide relief to the Defence. Should the Trial Chamber determine that the relief requested does not fall within the jurisdiction of the Trial Chamber, the Prosecution requests that the Trial Chamber order or request the Registrar to immediately take all necessary administrative actions to finally determine the matters raised by the Defence Motion.

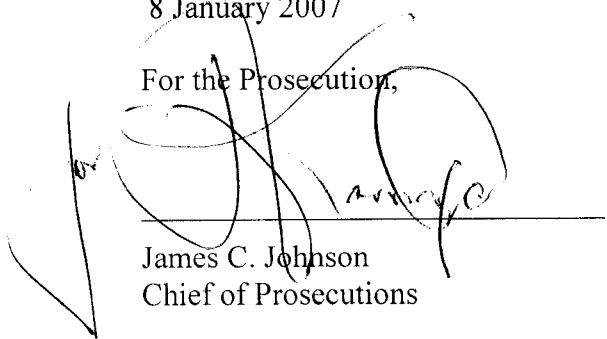
in the present case", emphasis added. In the case of *Prosecutor v Knezevic*, IT-95-4-PT, IT-95-8/1-PT, "Decision on Accused's Request for Review of Registrar's Decision as to Assignment of Counsel", 6 September 2002, p. 4, the Trial Chamber found that the Registrar had primary responsibility for the assignment of Counsel and that the Trial Chamber's powers to review the Registrar's decisions "should only be used in exceptional cases". In *Prosecutor v Norman*, SCSL-2003-08-PT-119, "Decision on Motion for Modification of the Conditions of Detention", 26 November 2003, para. 5, the President stated that in certain limited situations the President should oversee the Registrar, but "[o]therwise, judges are not involved in administrative detention matters unless they impact significantly upon the right under Article 17(4)(b) of the Statute to adequate preparation of the defence, when they may be raised by motion before the Trial Chamber judges who are best placed to make such a determination." The granting of additional facilities in *Prosecutor v Norman, Fofana, Kondewa*, SCSL-04-14-PT-141, "Decision on Request by Samuel Hinga Norman for Additional Resources to prepare his Defence", 23 June 2004, was in the unique circumstances of an Accused representing himself with the assistance of standby counsel.

⁷ *Prosecutor v Taylor*, SCSL-03-01-PT-137, "Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room", ("**Decision on Motion Requesting Removal of Camera**"), 30 November 2006, emphasis added.

Filed in Freetown

8 January 2007

For the Prosecution,

A large, stylized handwritten signature in black ink, appearing to read 'J.C. Johnson', is written over a horizontal line. The signature is highly cursive and loops around the text below it.

James C. Johnson
Chief of Prosecutions